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APR 12 1991

Federal Communications Commission  
Office of the Secretary

APR 15 2 47 PM '91  
AUDIO SERVICES

April 12, 1991

Ms. Donna R. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D.C. 20554

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APR 15 1991

Attn.: FM Branch  
Audio Services Division  
Mass Media Bureau

FM EXAMINERS

Dear Ms. Searcy:

There is transmitted herewith on behalf of WJAC, Incorporated, licensee of Station WJAC-TV, Johnstown, Pennsylvania, an original and four copies of a Petition to Deny directed against an application (File No. BPED-900606MC) by He's Alive, Inc. for a new noncommercial educational station in Murrysville, Pennsylvania. Attached to this Petition is a supporting affidavit and statement by Cohen, Dippell and Everist, the consulting engineers for WJAC, Incorporated.

There is no filing fee for the submission of the enclosed petition.

Should additional information be needed, kindly communicate with this office.

Very truly yours,



Earl R Stanley  
WILKINSON, BARKER, KNAUER & QUINN

Counsel for WJAC, Incorporated

Enclosure

ORIGINAL

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

APR 12 1991

Federal Communications Commission  
Office of the Secretary

In re Application of )  
HE'S ALIVE, INCORPORATED )  
Construction Permit for a )  
Noncommercial Educational )  
FM Station in Murrysville, )  
Pennsylvania )

File No. BPED-900606MC

To: Chief, Mass Media Bureau

PETITION TO DENY

WJAC, Incorporated, by its counsel, respectfully submits this Petition to Deny directed against the above-captioned application of He's Alive, Incorporated ("He's Alive") for a new noncommercial educational FM station at Murrysville, Pennsylvania. In support hereof, an Engineering Statement prepared by Cohen, Dippell & Everist, P.C., Consulting Engineers, is attached.

Factual Background

1. The instant application of He's Alive proposes a new noncommercial educational station to operate on Channel 201 (81.1 MHz) with 0.05 kilowatts power and an antenna height above average terrain of 67.1 meters (220 feet) at Murrysville, Pennsylvania. This application, as originally filed June 6, 1990, was returned December 6, 1990 because of impermissible overlap of signal strength contours under Section 73.509 of the rules. On

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December 20, 1990, He's Alive moved to amend and for reinstatement of the application *nunc pro tunc*. This motion was granted by staff letter ruling dated February 25, 1991 (Reference 8920-JRW, mailed March 7, 1991) and the applicant's curative amendment tendered therewith was accepted.

2. In its letter ruling of February 25, 1991, the Commission also pointed out, however, that its further examination of the application revealed discrepancies in the television Channel 6 study submitted by He's Alive and that a portion of the area of predicted interference is located within the Grade A contour of Station WJAC-TV. The Commission, therefore, asked He's Alive to submit a revised Channel 6 interference study.<sup>1/</sup>

#### Standing

3. WJAC, Incorporated ("WJAC") is the licensee of Television Station WJAC-TV, Johnstown, Pennsylvania. The proposed transmitter site for He's Alive's station is 0.13 kms outside the WJAC-TV Grade A contour. As the attached Engineering Statement demonstrates, He's Alive's proposed station will cause interference to the off-air reception of Station WJAC-TV in an area of 32 square kilometers encompassing a population of 7,948

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<sup>1/</sup> He's Alive has requested additional time to April 29, 1991 to respond to the Commission's letter of February 25, 1991. April 29, 1991 is well beyond the "cut-off" date of April 12, 1991 for the Murrysville application. The filing of the present Petition to Deny is, therefore, without prejudice to the right of WJAC, Incorporated to review the response by He's Alive to the Commission's letter and to further oppose its Murrysville application.

persons. A claim of such interference is a ground for standing to file a Petition to Deny pursuant to Section 309(d) of the Communications Act. See National Broadcasting Co., Inc. v. FCC, 132 F. 2d 545 (D.C. Cir. 1932), affirmed, 319 U.S. 239 (1943); Kaye-Smith Enterprises, 64 F.C.C. 2d 688, 40 R.R. 2d 832 (1977). Thus, WJAC has standing to file this Petition to Deny.

The Proposed Station Will  
Cause Interference to the  
Public's Reception of Station WJAC-TV

4. WJAC has caused its consulting engineering firm, Cohen, Dippell and Everist, to review and analyze the application by He's Alive. The results are set forth in the attached engineering affidavit. With respect to this application, Cohen, Dippell and Everist conclude that within the WJAC-TV Grade A contour:

[t]he computed interference area to the off-air reception of WJAC-TV from the proposed Channel 201 He's Alive operation would encompass an area of 32 square km (12.4 square miles) and a population of 7,948 based upon the 1980 census of population. <sup>2/</sup>

The Application Is Not In Compliance  
With the Commission's Rules; Creating  
Interference to the Reception of  
WJAC-TV Will Not Serve the Public Interest

5. Section 73.525(c) of the Commission's rules requires applicants for new noncommercial educational FM facili-

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<sup>2/</sup> Attached to the Cohen, Dippell and Everist statement is a map depicting the area of interference within WJAC-TV's Grade A service contour.

ties to show that no more than 3,000 persons are located in the TV Channel 6 area which is predicted to receive interference. The station proposed by He's Alive would violate this rule since the interference impacted population exceeds the permitted 3,000 persons by 4,948 persons. <sup>3/</sup> Indeed, He's Alive has not included a reliable or acceptable Channel 6 TV interference showing; its application is, therefore, defective and must be dismissed or denied. <sup>4/</sup>

6. A loss of the off-the-air reception of long-time NBC-TV and local WJAC-TV television programming and services by 7,948 persons in the Murrysville area of Pennsylvania would be contrary to the interests of these people, would most assuredly result in a flood of public complaints, and would not be acceptable in the public interest. There is no statutory justifi-

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<sup>3/</sup> Under the Commission's rule, an adjustment may be made to the number of persons who will be affected by interference which allows for an additional 1,000 persons in the interference area if the applicant installs filters on 1,000 television receivers in that area and certifies such installation to the affected TV Channel 6 station.

There is no indication that consideration was given by He's Alive to using a higher frequency in the educational portion of the band or a commercial channel (with an appropriate waiver) that would not result in interference to the public's reception of the WJAC-TV Channel 6 signals.

<sup>4/</sup> E.g., In re Applications of Briarwood Presbyterian Church, et al, for Construction Permit for a New Noncommercial FM Station on Channel 203 in Birmingham, Alabama (Hearing Designation Order), 6 F.C.C. Rcd. 536 (1991).

cation or reason for creating such interference within the Grade A service area of Station WJAC-TV. <sup>5/</sup>

CONCLUSION

The application by He's Alive for a new noncommercial educational FM station in Murrysville, Pennsylvania violates Section 73.585(c) of the rules. The proposed station, contrary to the public interest standards of the Communications Act, would create a large area of unacceptable interference to the public's reception of the programming and services of Station WJAC-TV within the station's Grade A contour. For these and other reasons, the Commission is requested to grant this Petition to Deny, to dismiss or deny the application by He's alive, Inc. for

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<sup>5/</sup> Since late 1984, the off-the-air service of WJAC-TV has been subjected to interference in the Garrett County, Maryland area due to the operation of noncommercial religious Station WAIJ(FM) on 90.3 MHz (Channel 212) in Grantsville. (See FCC Letter dated August 22, 1989 to He's Alive, Inc. and WJAC, Incorporated denying WJAC-TV's objections to the WAIJ license application (File No. BLED-841001DW; Reference 8920-DEB).) In WAIJ, the interference area impacted approximately 7,000 persons within a 7-mile radius of WAIJ. Based on Arbitron audience surveys, WJAC-TV experienced a 61% loss in viewership in Garrett County and Grantsville, a loss attributable solely to the operation of WAIJ(FM). Over the years since, the actual interference caused by WAIJ has been devastating to the coverage of WJAC-TV in that county. Based on 1985 and 1990 Nielsen County Coverage audience studies, the sign-on to sign-off average quarter hours for Station WJAC-TV in Garrett County was 30.8% in 1985. In 1990, this share had decreased to 17.0%. Even more graphic, the average quarter hour households decreased from 873 in 1985 to 311 in 1990. The Murrysville application proposes additional interference impacting almost 8,000 WJAC-TV viewers with no apparent countervailing benefits. There is no public interest justification for allowing this additional interference to the reception of WJAC-TV.

a noncommercial educational station in Murrysville, Pennsylvania, and to grant such further relief as is warranted and justified in the circumstances.

Respectfully submitted,

WJAC, INCORPORATED

By:

  
Earl R Stanley

WILKINSON, BARKER, KNAUER & QUINN  
1735 New York Avenue, N.W.  
Washington, D.C. 20006  
(202) 783-4141

Dated: April 12, 1991

COHEN, DIPPELL AND EVERIST, P. C.

EXHIBIT E

ENGINEERING STATEMENT  
ON BEHALF OF  
WJAC-TV, JOHNSTOWN, PENNSYLVANIA  
RE EDUCATIONAL FM APPLICATION  
BPED-900606MC, MURRYSVILLE, PENNSYLVANIA  
APRIL 1991



COHEN, DIPPELL AND EVERIST, P. C.


City of Washington     )  
                              ) ss  
District of Columbia )

Warren M. Powis, being duly sworn upon his oath, deposes and states that:

He is a graduate electrical engineer of The University of Canterbury, New Zealand, a Registered Professional Engineer in the District of Columbia and the State of Virginia, a Vice President of Cohen, Dippell and Everist, P.C., Consulting Engineers, Radio-Television, with offices at 1300 L Street, N.W., Suite 1100, Washington, D.C. 20005; previously employed for 15 years with the New Zealand Broadcasting Corporation; a member of the Institution of Professional Engineers New Zealand (IPENZ), the Association of Federal Communications Consulting Engineers (AFCCE), and the National Society of Professional Engineers (NSPE).

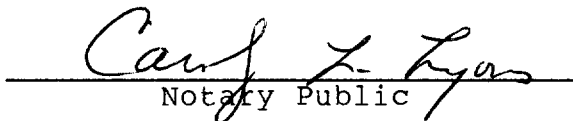
That his qualifications are a matter of record in the Federal Communications Commission;

That the facts stated herein are true of his own knowledge, except such facts as are stated to be on information and belief, and as to such facts, he believes them to be true.



Warren M. Powis  
District of Columbia  
Professional Engineer  
License No. 8339

Subscribed and sworn to before me this 8<sup>th</sup> day  
of April, 1991.

  
Notary Public

My Commission Expires:

2/28/93

COHEN, DIPPELL AND EVERIST, P. C.

This engineering statement has been prepared on behalf of WJAC Inc., licensee of Channel 6 television station WJAC-TV, Johnstown, Pennsylvania, in support of its petition to deny the application of He's Alive, Inc., for a new educational FM station at Murrysville, Pennsylvania, FCC File No. BPED-900606MC. He's Alive proposes operation on Channel 201 (88.1 MHz) with an effective radiated power of 0.05 kW and an antenna height above average terrain of 67.1 meters. On February 25, 1991, the Commission sent He's Alive a letter (reference 8920-JRW) concerning discrepancies in its TV Channel 6 study. To date, no response by He's Alive has been found.

The attached map depicts the area of computed interference to the off-air Channel 6 reception of WJAC-TV within the computed Grade A contour. Interference beyond the Grade A contour of WJAC-TV was not computed since this area is also located outside the WJAC-TV area of dominant influence and within the City Grade contour of WPXI, Pittsburgh, Pennsylvania, which has the same network affiliation as WJAC-TV.

The computed interference area to the off-air reception of WJAC-TV from the proposed Channel 201 He's Alive operation would encompass an area of 32 square km (12.4 square miles) and a population of 7,948 based upon the 1980 census of population. This exceeds the permissible 3,000 figure by 4948.

COHEN, DIPPELL AND EVERIST, P. C.

- 2 -

The NGDC 30-second data base was used to determine the WJAC-TV effective antenna heights in one degree azimuthal increments from N 267.2°E to N 287.2°E. The effective antenna heights above average terrain from the He's Alive application were similarly determined in one degree increments from N 0°E clockwise to N 359°E. The following contours were determined for each station:

<u>TV Channel 6</u> <u>F(50,50) Contour</u> dBu	<u>FM Channel 201 F(50,10)</u> <u>Interfering Contours</u> dBu
68	63.4
69	64.3
69.5	64.7
70	65.0
71	65.9

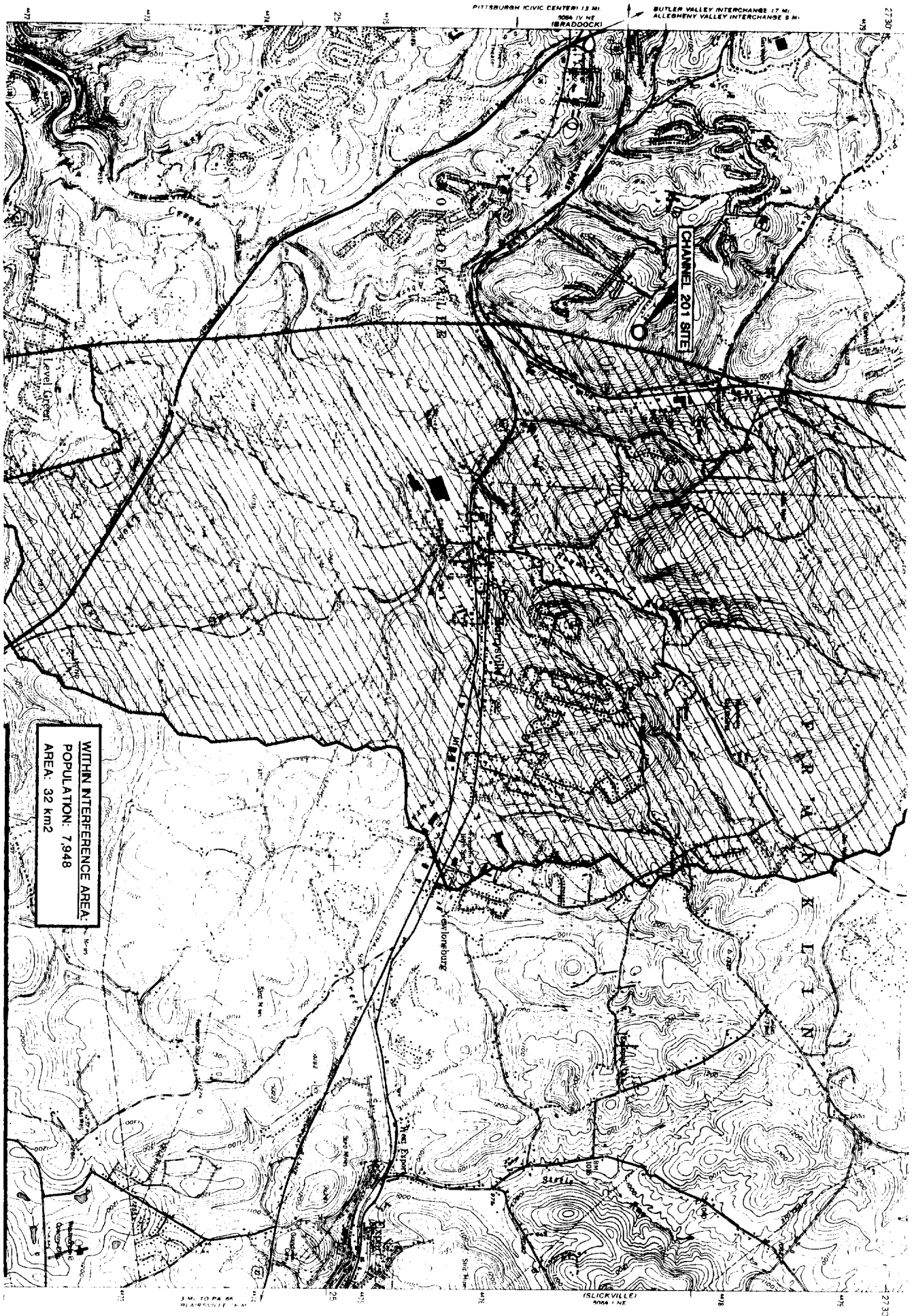
A 6 dB adjustment for receive antenna directivity applies from He's Alive site between azimuth angles N 346.7°E clockwise to N 26.7°E and N 166.7°E clockwise to N 206.7°E.

The resulting interference area computed in accordance with Section 73.525(e)(1) was plotted on a USGS 7-1/2 minute topographic map (copy attached). The predicted interference area was also plotted on a minor civil division map of Pennsylvania, and the population was counted in accordance with Section 73.525(e)(2) of the FCC Rules and Regulations.

COHEN, DIPPELL AND EVERIST, P. C.

- 3 -

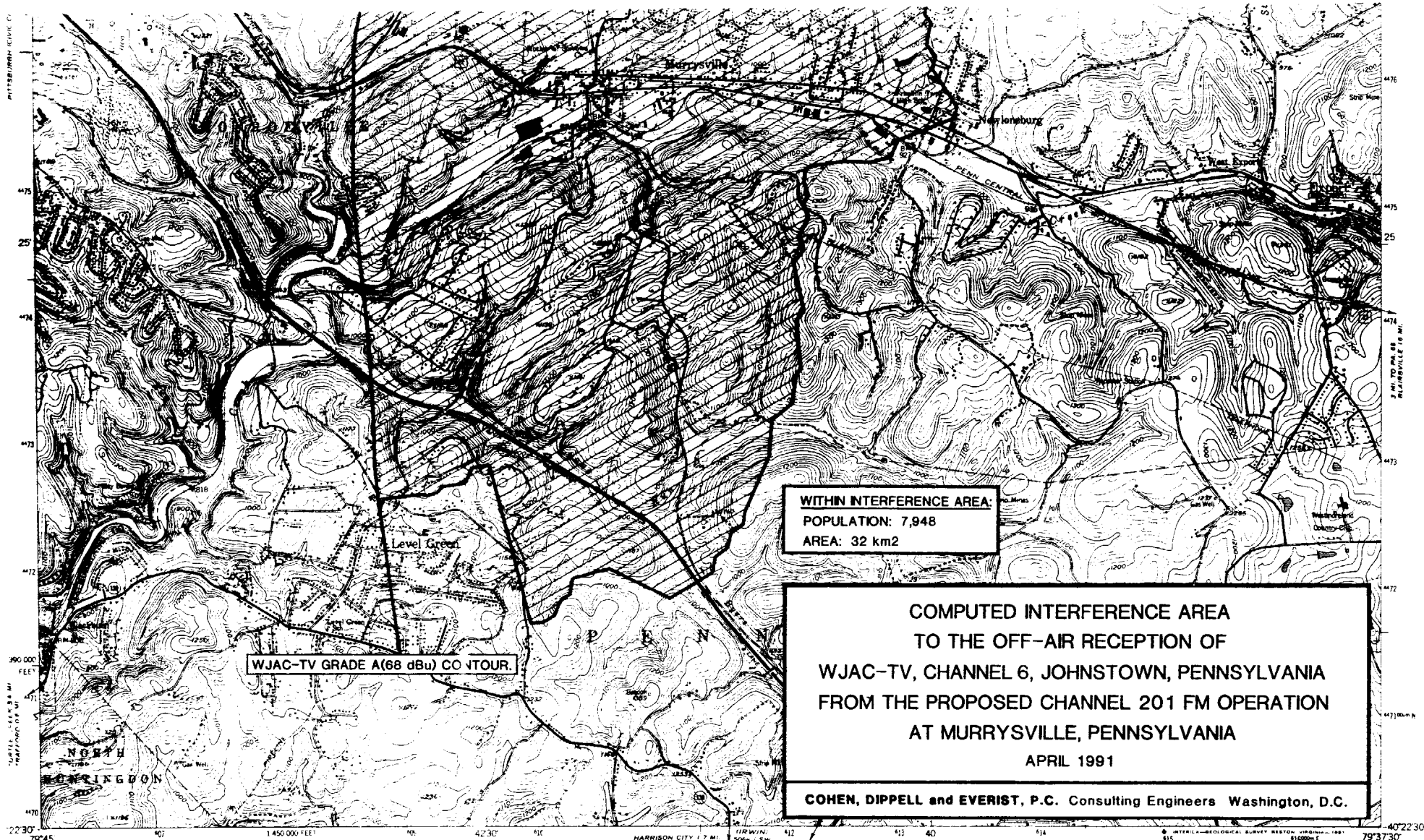
Since the impacted population in the vicinity of the proposed He's Alive station is in excess of 3,000 persons, the proposed Channel 201 educational FM station would not comply with Section 73.525(c) of the Commission's rules.



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
GEOLOGICAL SURVEY

MURRYSVILLE QUADRANGLE  
PENNSYLVANIA  
7.5 MINUTE SERIES (TOPOGRAPHIC)





Mapped, edited, and published by the Geological Survey

Control by USGS and USC&GS

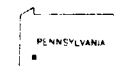
Topography by photogrammetric methods from aerial photographs taken 1952. Field checked 1953

Polyconic projection: 10,000-foot grid ticks based on Pennsylvania coordinate system, south zone. 1000-meter Universal Transverse Mercator grid ticks, zone 17, shown in blue. 1927 North American Datum. To place on the predicted North American Datum 1983, move the projection lines 4 meters south and 15 meters west as shown by dashed corner ticks.

Revisions shown in purple compiled in cooperation with State of Pennsylvania agencies, from aerial photographs taken 1969. This information not field checked.



THIS MAP COMPLIES WITH NATIONAL MAP ACCURACY STANDARDS  
FOR SALE BY U. S. GEOLOGICAL SURVEY, RESTON, VIRGINIA 22092  
A FOLDER DESCRIBING TOPOGRAPHIC MAPS AND SYMBOLS IS AVAILABLE ON REQUEST



QUADRANGLE LOCATION

Map photinspected 1977. No major culture or drainage changes observed

ROAD CLASSIFICATION  
Heavy-duty ——— Light-duty ———  
Medium-duty ——— Unimproved dirt ———  
U. S. Route ——— State Route ———  
Interstate Route ———  
MURRYSVILLE, PA.

N4022.5—W7937.5/7.5  
PHOTOINSPECTED 1977  
1953

PHOTOREVISED 1969  
AMC 5064 I NW—SERIES V831

CERTIFICATE OF SERVICE

I, Marilyn D. Garrett, a secretary in the law firm of Wilkinson, Barker, Knauer & Quinn, certify that I have this 12th day of April 1991 served a copy of the foregoing "Petition to Deny" by first-class U.S. mail, postage prepaid, or by hand delivery, upon the following:

\* Larry D. Eads, Esquire, Chief  
Audio Services Division  
Federal Communications Commission  
1919 M Street, N.W., Room 302  
Washington, D.C. 20554

\* Dennis Williams, Chief  
FM Branch  
Federal Communications Commission  
1919 M Street, N.W., Room 332  
Washington, D.C. 20554

Lee J. Peltzman, Esquire  
Baraff, Koerner, Ollender &  
Hochberg, P.C.  
5335 Wisconsin Avenue, N.W.  
Washington, D.C. 20015  
Counsel for He's Alive, Inc.

  
Marilyn D. Garrett

\* Via Hand Delivery